

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of )

Self-Certification of )

Valor Telecommunications of )

New Mexico, LLC, and )

Valor Telecommunications of Texas, LP )

as Rural Telephone Companies )

Valor Telecommunications of Texas, LP )

and GTE Southwest Incorporated )

Joint Petition for Waiver of the )

Definition of "Study Area" of the )

Appendix – Glossary of Part 36 )

Federal-State Joint Board on )

Universal Service )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DA No. 00-1015

CC Docket No. 96-45

**PETITION TO REJECT  
RURAL TELEPHONE COMPANY SELF-CERTIFICATION**

Western Wireless Corporation ("Western Wireless"), by its attorneys and pursuant to 47 C.F.R. § 1.2, hereby requests that the Commission reject the self-certification letter filed by Valor Telecommunications Southwest, LLC, and subsidiaries Valor Telecommunications of Texas, LP, and Valor Telecommunications of New Mexico, LLC (collectively, "Valor"), on June 27, 2000 ("Valor RTC Letter"), purporting to have those carriers certified as rural telephone companies ("RTCs") under 47 U.S.C. § 153(37). 1/ The Valor RTC Letter, which was filed to allow Valor to participate in federal support mechanisms for rural telephone companies, states that Valor satisfies the RTC criteria under subsection D of the

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1/ A copy of the Valor RTC Letter is attached hereto.

definition in Section 3(37) of the Communications Act of 1934, as amended (the "Act"). 2/ However, as demonstrated below, Valor does not qualify as an RTC, and the Commission should reject Valor's claim to be treated as such. 3/

## I. BACKGROUND

Western Wireless is a commercial mobile radio service ("CMRS") provider that has petitioned for designation as an eligible telecommunications carrier ("ETC") in 15 states, including Texas and New Mexico. In particular, Western Wireless currently has applications pending before the Public Utility Commission of Texas ("Texas PUC") and the New Mexico Public Regulation Commission ("New Mexico PRC") to be designated as an ETC in each of those states. 4/ Western Wireless seeks ETC status in geographic areas in both Texas

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2/ 47 U.S.C. § 153(37)(D).

3/ The instant Petition to Reject is also being filed as an *ex parte* comment in response to *GTE Southwest, Inc., and Valor Telecommunications of Texas Seek Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, FCC 00-1015 (released May 8, 2000) ("Waiver Petition"). Western Wireless respectfully requests that any Commission grant of the Waiver Petition explicitly state that Valor shall not be treated as an RTC under Sections 3(37), 214(e), 251(f)(1), 254, or any other provisions of the Act or the Commission's rules. 47 U.S.C. §§ 153(37), 214(e), 251(f)(1), 254.

4/ See *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.418, and as an Eligible Telecommunications Provider Pursuant to 47 U.S.C. § 214(e) and PUC Subst. R. 26.417*, SOAH Docket no. 473-00-1167, PUC Docket No. 22289 (Texas PUC 2000) ("Western Wireless Texas ETC Petition"); *GCC License Corporation Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 98-484-TC, Utility Case No. 2921 ("Western Wireless New Mexico ETC Petition").

and New Mexico that include exchanges that Valor proposes to acquire, 5/ but that are currently served by GTE. Because GTE is not an RTC, the state commissions do not have to make any “public interest” findings under Section 214(e)(2) of the Act before designating Western Wireless as an ETC for those locations. 6/

Valor sought to intervene in Western Wireless’ ETC proceedings before the state commissions, and has sought treatment as an RTC in those proceedings. Because Western Wireless is not proposing to include within its designated service area all of the GTE exchanges being purchased by Valor, Valor’s RTC claims could result in competitive services being denied to consumers due to the federal requirement that competitive ETCs serve the whole of an RTC’s service area. 7/ Thus, Western Wireless has a direct interest in Valor’s claim to RTC status.

Western Wireless is submitting the instant Petition to Reject to challenge Valor’s self-certification as an RTC, in the absence of any established Commission procedure for raising such a challenge. The FCC has established a streamlined procedure whereby local exchange carriers (“LECs”) wishing to be treated as RTCs must file a self-certification with the FCC and their state

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5/ As discussed *infra* at Section II, Valor is purchasing approximately 315,000 access lines in Texas and 85,000 access lines in New Mexico from GTE Southwest, Inc. (“GTE”).

6/ See 47 U.S.C. § 214(e)(2) (“the State commission may in the case of an area served by [an RTC], and shall, in the case of all other areas, designate more than one common carrier as an [ETC] . . . . Before designating an additional [ETC] for an area served by [an RTC], the State commission shall find that the designation is in the public interest.”).

7/ See 47 U.S.C. § 214(e)(5). Western Wireless has not proposed to serve the whole of these exchanges because they are outside the coverage permitted by Western Wireless’s FCC licenses.

commission setting forth the basis for their RTC status, and they must update that filing if their status changes after their initial filing. <sup>8/</sup> However, the Commission has not established any means by which interested parties can challenge a LEC's claim that it qualifies as an RTC. Once a self-certified RTC's status is questioned, though, it is incumbent upon the Commission to make a determination as to whether or not a carrier meets the RTC qualifications. Western Wireless respectfully requests that the Commission expeditiously issue a Public Notice seeking comment on this petition and, based on the record gathered in response to such notice, issue a ruling that Valor is not entitled to RTC status.

## II. FACTS

Valor is a recently established, closely-held company, funded by private equity investor Welsh, Carson, Anderson and Stowe, along with the venture capital divisions of Citicorp and Vestar. Valor is in the process of acquiring exchanges being sold by GTE. In particular, Valor is in the process of acquiring nearly 400,000 local access lines being sold by GTE in New Mexico and Texas, <sup>9/</sup> approximately 315,000 of which are in Texas.

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<sup>8/</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Report and Order, 14 FCC Rcd 20156, 20350-54, ¶¶ 440-49 (1999).

<sup>9/</sup> See <http://www.valortelecom.com/socoinfo2.html>. Valor has also agreed to purchase an additional 120,092 GTE lines in Oklahoma. *Id.* Notably, the Valor RTC Letter does not purport to self-certify that Valor is an RTC in Oklahoma.

Valor did not exist before 1999 and has no “study area” for purposes of the Act and the FCC’s rules. Due to the FCC’s study area freeze, 10/ the exchanges Valor is purchasing from GTE remain in GTE’s study areas, and no Valor study areas may exist unless and until the Commission waives the study area freeze for the transaction. 11/ GTE and Valor filed the Waiver Petition to allow the exchanges Valor is purchasing to be removed from GTE’s two Texas study areas and placed into a single new Valor study area in Texas. 12/ Valor has not consummated its purchase of lines from GTE, and cannot do so until the Commission grants the Waiver Petition. 13/

Despite the fact that Valor has not consummated the GTE transaction and presently provides no service in Texas, New Mexico, or anywhere else – and never has – the company filed the Valor RTC Letter purporting to self-certify that it qualifies for treatment as an RTC. The Valor RTC Letter claims that Valor

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10/ See 47 C.F.R. § 36 app. (defining “study area”). See also *MTS and WATS Market Structure, Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, Recommended Decision and Order*, 49 Fed. Reg. 48325 (1984); *Decision and Order*, 50 Fed. Reg. 939 (1985); *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

11/ See *supra* note 3.

12/ *Id.* According to a study area freeze waiver petition filed in another context and yet to be placed on public notice, GTE and Valor did not file a waiver petition for New Mexico because, they contend, “the GTE/Valor transaction involved GTE’s entire New Mexico study area [so] no waiver request was filed or necessary[.]” See Joint Petition for Expedited Waiver, filed by Mescalero Apache Telecom Inc., GTE Southwest Incorporated and Valor Telecommunications of New Mexico, LLC, for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules, filed in CC Docket No. 96-45, June 30, 2000, at 2 n.3.

13/ Waiver Petition at 1 n.2.

qualifies as an RTC in Texas and New Mexico pursuant to 47 U.S.C. § 153(37)(D). In addition, Valor has sought to intervene in Western Wireless' ETC proceedings before the Texas and New Mexico commissions and claimed RTC status for that purpose, even though Valor (i) is not yet providing service in Texas or New Mexico, (ii) has not had the Waiver Petition granted to create a Valor study area in Texas (and has only assumed that it has a study area in New Mexico), and (iii) has not qualified as an RTC.

### **III. DISCUSSION**

Valor does not qualify as an RTC. Valor does not satisfy any of the definitions of an RTC set forth in Section 3(37) of the Act. In addition, Valor should not be accorded RTC status for purposes of ETC designations under Section 214(e)(2) of the Act, because such a result would be profoundly anti-competitive and would contravene long-established Commission policies.

#### **A. Valor Does Not Qualify as an RTC Under Sections 3(37)(A), (B) or (C) of the Act.**

Valor seeks RTC status pursuant to 47 U.S.C. § 153(37)(D), and thereby essentially concedes that it cannot qualify as an RTC under subsections (A), (B) or (C) of Section 3(37). Indeed, the Waiver Petition reveals that, if the Commission grants the Waiver Petition, Valor will obtain 315,000 access lines in Texas, comprising a single Texas study area for Valor that will include Texarkana, Texas, a city of over 30,000 people. <sup>14/</sup> This means that:

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<sup>14/</sup> See Waiver Petition at 1-2, Attachment 1 at 4.

- Valor cannot be an RTC under Section 3(37)(A). Section 3(37)(A) requires that a carrier's study area not include "any incorporated place of 10,000 inhabitants or more, or any part thereof." <sup>15/</sup> If and when the Commission allows Valor to establish a study area in Texas, the study area will encompass Texarkana, which has a population of over 10,000. The Waiver Petition also reveals that Valor's proposed service area in New Mexico includes Carlsbad City, which also has a population of over 10,000. <sup>16/</sup>
- Valor cannot be an RTC under Section 3(37)(B). Section 3(37)(B) requires that a carrier "provide telephone exchange service, including exchange access, to fewer than 50,000 access lines." <sup>17/</sup> Valor will provide service to approximately 315,000 lines in Texas alone, over 80,000 in New Mexico alone, and over 500,000 total if Oklahoma is included.
- Valor cannot be an RTC under Section 3(37)(C). Section 3(37)(C) requires that a carrier "provide telephone exchange service to [a study area] with fewer than 100,000 access lines." <sup>18/</sup> If and when the Commission allows Valor to establish a study area in Texas, the study area will have approximately 315,000 lines, well over the 100,000-line threshold. Valor has not claimed that it satisfies this standard in New Mexico, nor has it provided the necessary data to demonstrate that it satisfies the standard.

Thus, Valor cannot qualify as an RTC unless it meets the requirements of Section 3(37)(D) of the Act, which (as we show below) it fails to do.

**B. Valor Does Not Qualify as an RTC Under Section 3(37)(D) of the Act**

Valor does not meet the RTC criteria in Section 3(37)(D), which requires that a LEC have "less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." <sup>19/</sup> First, Valor was not a LEC on the date of enactment of the 1996 Act, and

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<sup>15/</sup> 47 U.S.C. § 153(37)(A).

<sup>16/</sup> See Valor RTC Letter at New Mexico Attachment and data page 1.

<sup>17/</sup> 47 U.S.C. § 153(37)(B).

<sup>18/</sup> *Id.* § 153(37)(C).

<sup>19/</sup> *Id.* § 153(37)(D).

Valor did not have “less than 15 percent of its access lines in communities of more than 50,000” on the date the 1996 Act was adopted. In fact, Valor did not have any access lines on that date, and was not even in existence until late 1999. Thus, Section 3(37)(D) on its face does not apply to Valor.

Second, Valor is purchasing exchanges from GTE that have already been disqualified from satisfying the Section 3(37)(D) definition because GTE had substantially more than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996. Valor’s purchase of those exchanges from a non-RTC simply cannot retroactively shoehorn itself into Section 3(37)(D). The FCC adopted the study area freeze, which is “tied directly to the rules and procedures for . . . Universal Service support,” 20/ precisely to “prevent carriers from subdividing study areas to gain an advantage under the [universal service] rules.” 21/ Any interpretation of Section 3(37)(D) that would allow Valor to qualify as an RTC would completely subvert the Commission’s long-established policies in this regard.

Finally, it would be profoundly anti-competitive for Valor’s claimed RTC status to prejudice the ETC status of prospective competitive entrants such as Western Wireless. Thus, even if a new entrant such as Valor, that was not providing service at the time the 1996 Act was adopted, could qualify as an RTC under Section 3(37)(D) for purposes of Section 251(f)(1) or other provisions of the Act, the Commission should hold that the carrier may not be treated as an RTC for

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20/ *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 FCC Rcd 16802, ¶ 99 (1997).

21/ *U S WEST Communications, Inc.*, AAD 93-95, Memorandum Opinion and Order, 9 FCC Rcd 4811, ¶ 15 (CCB 1994).



purposes of Section 214(e)(2) of the Act. If the mere purchase of a formerly non-RTC exchange by a new carrier claiming RTC status was sufficient to turn the exchange into “an area served by a rural telephone company” for Section 214(e)(2) purposes, all designated competitive ETCs and applicants for ETC status could be substantially prejudiced:

- Any competitive ETC that had already been designated for a service area incorporating a former non-RTC exchange could face being hauled back before the state commission for a finding that the public interest would be served for the competitive ETC to retain its designation for the transferred exchange(s). Such an outcome was never contemplated by the Section 214(e) protections for RTCs existing as of the date of enactment of the 1996 Act.
- Given the requirement that a competitive ETC serve the whole of an RTC’s study area, an existing competitive ETC serving non-RTC exchanges could suddenly find itself obligated, if some non-RTC exchanges are automatically transformed into an RTC’s study area upon purchase, to serve additional areas, *i.e.*, the balance of that RTC’s study area.
- Any prospective competitive ETC whose petition for designation is pending at the time a putative RTC purchases or otherwise acquires formerly non-RTC exchanges would face a public interest inquiry that it did not face at the time it filed its petition, and which may not be adequately addressed by that petition. To the extent the ETC applicant had already advanced through most of the designation process, it could find itself forced to go back to “square one” and begin the process anew. The unilateral decision of a party that purchases non-RTC exchanges should not dictate the rights of any competitive applicant for ETC designation.
- When an RTC expands its operation to compete in a non-RTC’s service territory as a competitive carrier, it would make that portion of the non-RTC’s service territory “an area served by a rural telephone company” under Section 214(e)(2). This, paradoxically, could result in subjecting the incumbent non-rural LEC to a public interest inquiry as to its continued ETC status, and it could require the same for any competitive ETC already designated in that service territory (as well as for any new competitive ETCs awaiting or contemplating designation). These results are well outside the scope of protected status for RTCs under Section 214(e), and contrary to sound public policy.

Each of these anti-competitive outcomes – none of which were intended by the RTC protections built into the 1996 Act – can be avoided only if the Commission holds

that non-RTC lines and/or exchanges cannot be converted or incorporated into RTC service areas merely by a small telecommunications carrier's purchase of assets from a non-RTC. The Commission should act forcefully to prevent this anti-competitive outcome.

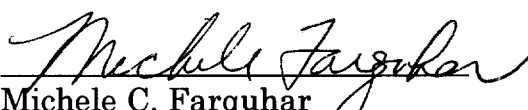
#### IV. CONCLUSION

Based on the foregoing, Western Wireless respectfully requests that the Commission issue a ruling rejecting Valor's purported self-certification, and concluding that Valor does not qualify as an RTC in Texas or New Mexico under Section 3(37) of the Act.

Respectfully submitted,

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